

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
DELTA DIVISION

RICK SAFFOLD

PLAINTIFF

V.

NO. 2:97CV256-B-B

TIM FORTENBERRY AND
THE CITY OF CLARKSDALE
DEFENDANTS

MEMORANDUM OPINION

This cause comes before the court on the plaintiff's motion to remand and motion for leave to amend. The notice of removal alleges federal question jurisdiction. The court has duly considered the parties' memoranda and is ready to rule.

I. Motion to Remand

A. Timeliness

The defendants assert that the motion to remand should be denied on the ground of untimeliness pursuant to 28 U.S.C. § 1447(c). The motion to remand was filed thirty-two days after the notice of removal was filed. Section 1447(c) provides in part:

A motion to remand the case on the basis of any defect other than lack of subject matter jurisdiction must be made within 30 days after the filing of the notice of removal under section 1446(a).

The plaintiff seeks remand on the ground of lack of subject matter jurisdiction. Therefore, the thirty-day deadline to move to remand clearly does not apply to the instant motion.

B. Subject Matter Jurisdiction

Under the well-pleaded complaint rule, a federal question must appear on the face of the plaintiff's properly pleaded complaint to establish federal question jurisdiction. Caterpillar, Inc.

v. Williams, 482 U.S. 386, 392, 96 L. Ed. 2d 318, 327 (1987). The notice of removal states that "in his Complaint Plaintiff alleges violations of his constitutional rights under the Fourth and Fourteenth Amendments¹ to the United States Constitution which presents [sic] a federal question." The notice further states that the court may exercise pendent jurisdiction over the plaintiff's state law claims. The complaint states that this cause is brought pursuant to Mississippi's Tort Claims Act, Miss. Code Ann. §11-46-1, et seq. and alleges three causes of action: (1) false imprisonment, (2) malicious prosecution, and (3) abuse of process. In support of the first cause of action of false imprisonment, the complaint expressly alleges arrest without probable cause or a warrant supported by probable cause in violation of the Fourth Amendment and the Mississippi Constitution and denial of the plaintiff's right to bail and/or unreasonable delay in setting his initial appearance in violation of the Eighth Amendment, the Mississippi Constitution and Rule 6.03 (initial appearance) of the Mississippi Uniform Rules of Circuit and County Court Practice.

The plaintiff asserts that the references to federal constitutional rights in support of an independent state law claim do not convert the state claim into a federal claim for jurisdictional purposes. In the alternative, the plaintiff seeks leave to amend in order to eliminate any reference to federal law in the complaint. Such an amendment cannot oust the court's removal jurisdiction under

the general rule that removal jurisdiction should be determined on the basis of the state court complaint at the time of removal, and that a plaintiff cannot defeat removal by amending it.

¹In opposition to the motion to remand, the defendants assert that the complaint impliedly alleges violation of the plaintiff's Fourteenth Amendment due process rights.

Cavallini v. State Farm Mut. Auto Ins. Co., 44 F. 3d 256, 265 (5th Cir. 1995).² The court finds that the express allegations of Fourth and Eighth Amendment violations invoke federal question jurisdiction.³ "[T]he assertion of a claim under a federal statute [or federal constitutional provision] alone is sufficient to empower the District Court to assume jurisdiction over the case...." Holland/Blue Streak v. Barthelemy, 849 F.2d 987, 989 (5th Cir. 1988) (internal quotation omitted) (footnote citations omitted), quoted in Cervantez v. Bexar County Civil Service Com'n, 99 F.3d 730, 733 (5th Cir. 1996).⁴ Accordingly, the removal of this cause was proper.

II. Motion to Amend

Under the well-pleaded complaint rule, the plaintiff is "the master of the claim" and "may avoid federal jurisdiction by exclusive reliance on state law." Caterpillar, Inc., 482 U.S. at 392, 96 L. Ed. 2d at 327. Since the crux of the complaint is based on state law intentional tort claims, the court finds that the plaintiff's motion to amend should be granted. Under Mississippi law, the tort of false imprisonment requires proof of two elements: (1) detention of the plaintiff and (2) unlawful detention. Wallace v. Thornton, 672 So. 2d 724, 727 (Miss. 1996). The complaint

²Under 28 U.S.C. § 1447(e), in a diversity action, the district court may grant leave to add a nondiverse defendant after removal and remand the case.

³A case arises under federal law for purposes of 28 U.S.C. § 1331 if the cited federal law creates the alleged cause of action. Franchise Tax Bd. v. Constr. Laborers Vacation Trust, 463 U.S. 1, 27-28, 77 L. Ed. 2d 420, 442 (1983), superseded by statute on other grounds, 28 U.S.C. § 1441(e).

⁴Federal question does not exist if the cited federal law is "clearly immaterial and is invoked solely for the purpose of obtaining jurisdiction or if the claim is wholly insubstantial and frivolous." Cervantez v. Bexar County Civil Service Com'n, 99 F. 3d 730, 733 (5th Cir. 1996) (quoting Holland/Blue Streak v. Barthelemy, 849 F.2d 987, 989 (5th Cir. 1988) (footnote citations omitted)).

alleges that the plaintiff's detention was unlawful on the grounds of an unlawful arrest and denial and/or delay as to his right to bail. The plaintiff's right to a lawful arrest and to bail are protected by state law, independent of federal law. Therefore, the plaintiff may establish the unlawfulness of his detention exclusively under state law. See Hart v. Walker, 720 F.2d 1436, 1439, 1440 n.4 (5th Cir. 1983) (pendent state claim of false arrest⁵ was established on the basis of state law, independent of the alleged due process claim based on an unwarranted arrest).

Since the false imprisonment claim, as well as the other alleged state claims, does not depend on federal law,⁶ the court finds that the proposed amendment will eliminate all federal claims raised in the complaint, and, therefore, invokes the court's discretion to remand the remaining state claims to state court under 28 U.S.C. § 1367(c)(3) (codifying the ruling in Carnegie-Mellon Univ. v. Cohill, 484 U.S. 343, 98 L. Ed. 2d 720 (1988)).⁷ Section 1367(c)(3) provides that a district court may decline to exercise supplemental jurisdiction if "the district court has dismissed all claims over which it has original jurisdiction." Upon dismissal of federal claims, as in this cause,⁸ the court may decline to exercise supplemental jurisdiction over the

⁵Under Mississippi law, the elements of false arrest and false imprisonment are the same. Hart v. Walker, 720 F.2d 1436, 1439 (5th Cir. 1983) (construing Mississippi law).

⁶The assertion of a state law claim may invoke federal question jurisdiction if "the plaintiff's right to relief necessarily depends on resolution of a substantial question of federal law." Franchise Tax Bd. v. Constr. Laborers Vacation Trust, 463 U.S. at 27-28, 77 L. Ed. 2d at 442. As a corollary to the well-pleaded complaint rule, "a plaintiff may not defeat removal by omitting to plead necessary federal questions." Rivet v. Regions Bank, 522 U.S. ___, 139 L. Ed. 2d 912, 919 (1998) (quoting Franchise Tax Bd., 463 U.S. at 22, 77 L. Ed. 2d at 439).

⁷The federal claims in Carnegie-Mellon Univ. v. Cohill were eliminated by an order granting the plaintiffs' motion to amend.

⁸A discretionary remand under section 1367(c)(3) may be "predicated on the [plaintiff's] voluntary deletion of the federal causes of action." Rodriguez v. Valteau, No. 97-0658, 1997 WL 602191, at *1 (E.D. La. 1997) (citing Carnegie Mellon Univ. v. Cohill and Noble v. White, 996

remaining state claims. The court finds that the factors of judicial economy, convenience, fairness and comity weigh in favor of remand. For the foregoing reasons, the court finds that the plaintiff's motions for leave to amend and to remand should be granted. An order will issue accordingly.

THIS, the _____ day of July, 1998.

NEAL B. BIGGERS, JR.
UNITED STATES DISTRICT JUDGE